IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M146 of 2017

BETWEEN:

HFM043
Appellant

and

THE REPUBLIC OF NAURU
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Internet publication

1. These submissions are in a form suitable for publication on the internet.

Part II: Concise statement of issues

2. The Supreme Court of Nauru (the **Supreme Court**) found that the Nauru Refugee Status Tribunal (the **Tribunal**) erred in law by failing to adjourn the hearing and request the Appellant to obtain a full medical report.[1] Notwithstanding this error, the Supreme Court refused to remit the matter to the Tribunal, on the basis that s 31(5) of the *Refugees Convention Act* 2012 (Nr) (the **RC Act**) operated to prevent the Tribunal reconsidering the matter.[2] Instead, the Supreme Court declined to make any orders under s 44 of the RC Act, and dismissed the appeal.

3. The issues on appeal are as follows:

   a. *first*, did the Supreme Court err in the exercise of its discretion not to make any orders under s 44 of the RC Act on the appeal; and

   b. *secondly*, subject to the grant of leave to file a notice of contention, did the Tribunal make an error of law by failing to adjourn the hearing and to request the Appellant to obtain a medical report.

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1 *HFM 043 v Republic of Nauru* [2017] NRSC 43 (**J1**) at [65].

2 *HFM 043 v Republic of Nauru (No. 2)* [2017] NRSC 76 (**J2**) at [29].

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Part III: Section 78B notice

4. The Respondent has considered whether any notice should be given in compliance with s 78B of the *Judiciary Act* 1903 (Cth) and has concluded that no such notice is required.

Part IV: Factual background

5. The Respondent agrees with the statement of facts set out in Part V of the Appellant's submissions.

Part V: Statutory provisions

6. In addition to the statutory provisions set out in Annexure A of the Appellant's submissions, the Respondent also relies on the provisions of the:

   a. *Interpretation Act 2011* (Nr) (the **Interpretation Act**);

   b. *Refugees Convention (Derivative Status and Other Measures) (Amendment) Act 2016* (Nr) (the **Amending Act**);

   c. Explanatory Memorandum to the Refugees Convention (Derivative Status and Other Measures) (Amendment) Bill 2016 (Nr) (the **Explanatory Memorandum**);

   that are set out in Annexure A to these su0bmissions.

Part VI: Argument on the appeal

(a) Outline

7. The principal issues in this appeal involve the construction and operation of s 31(5) of the RC Act, which provides:

> An application made by a person under s 31(1)(a), that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time.

8. The Supreme Court correctly held that it would be futile to remit the matter to the Tribunal under s 44(1)(b) of the RC Act. This is because the Appellant's application for review would, on remitter, be taken to have been validly determined by operation of s 31(5) of the RC Act. In such circumstances, the

Tribunal would have no jurisdiction remaining to be exercised in relation to the application for review.

(b) Statutory text and context

9. The task of statutory construction must begin with "consideration of the [statutory] text".[3] The text, however, must be "read in the context of the law as a whole".[4] The relevant context includes legislative history and extrinsic materials.[5] Under Nauruan law, extrinsic materials may be considered to "resolve an ambiguous or obscure provision" or to "confirm or displace the apparent meaning of the law".[6]

10. Section 49(1) of the Interpretation Act requires the Court to give effect to "an interpretation that would best achieve the purpose of the written law" in preference to any other interpretation. That purpose may or may not be expressly stated in the statute itself.[7] The "objective discernment" of the statutory purpose is therefore "integral to contextual construction".[8]

11. Section 31(5) was introduced by s 22 of the Amending Act. By s 2(1) of the Amending Act, the amendment was given retrospective operation and was deemed to have commenced on 21 May 2014.[9]

12. Section 31(5) refers to an application under s 31(1) of the RC Act. Such an application is for merits review of, relevantly, a determination by the Secretary of an application for recognition as a refugee, an application for derivative status, or whether a person "is owed complementary protection".

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3 *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671 [22] (*per curiam*); *Federal Commissioner of Taxation v Consolidated Media Holdings* Ltd (2012) 250 CLR 503 at 519 [39] (*per curiam*); *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47] (Hayne, Heydon, Crennan and Kiefel JJ).

4 Interpretation Act, s 50.

5 Interpretation Act, s 52.

6 Interpretation Act, s 51(1). This provision is wider than, for example, s15AB of the *Acts Interpretation Act 1901* (Cth).

7 Interpretation Act, s 49(2).

8 *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671 [22] (*per curiam*), *Federal Commissioner of Taxation v Consolidated Media Holdings* Ltd (2012) 250 CLR 503 at 519 [40]

9 As to retrospective operation of Nauruan legislation generally, see s 22(1) of the Interpretation Act; see also, in relation to a different aspect of the Amending Act, *HFM 045 v Republic of Nauru* [2017] HCA 50 at [33]-[36].

13. The trigger for the operation of s 31(5) of the RC Act is the giving of a Refugee Determination Record to a person who has made an application for review. A Refugee Determination Record is defined in s 3 of the RC Act to mean "the certificate issued to a person who is owed international protection by Nauru under s 6(2A)". In turn, s 6(2A) of the RC Act provides that a Refugee Determination Record must be issued to a person who is "determined to be a refugee", "given derivative status", or "determined to be owed complementary protection".

14. The context is further informed by the Explanatory Memorandum, which, relevantly:

    a. describes the "Refugee Determination Record" as "*the common document issued to a person who is owed protection by Nauru, regardless of whether that person is recognized as a refugee, given derivative status, or found to be owed complementary protection*" (emphasis added);[10]

    b. describes proposed s 6(2A) of the RC Act as providing "*a legislative basis for the issue of a Refugee Determination Record to persons that have been determined to be owed protection by Nauru*" – the issue of a Refugee Determination Record was previously a practice adopted "*as a matter of policy*";[11] and

    c. explains the introduction of proposed s 31(5) (and the analogue provision of s 6(2B) applying to applications before the Secretary) as "*giving legislative effect to existing practice, whereby the issue of a Refugee Determination Record to a person is taken to conclude the determination of all protection claims made by that person*" (emphasis added).[12]

15. The text of s 31(5) makes plain that the Tribunal's review is taken to be determined – in the sense of concluded – upon the issue of a Refugee Determination Record. As illustrated by the related provision in s 6(2B),

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[10] Explanatory Memorandum, page 2.
[11] Explanatory Memorandum, page 3.
[12] Explanatory Memorandum, page 3.

which applies to *any* application made under s 5(1) (to be recognised as a refugee) or under s 5(1AA) (to be given derivative status) or under s 5(1A) (as an included dependent), the amendments were intended to apply to all extant applications made by a particular person, regardless of the basis on which the application was made.

16. Section 6(2A) shows that a Refugee Determination Record must be issued when a person is recognised as falling within any of the grounds for international protection that may form the basis of the Secretary's determination in s 6(1). The Refugee Determination Record is a "common document" issued regardless of the ground or grounds for protection recognised. The issue of a Refugee Determination Record is taken to conclude the assessment of all claims to protection, and not only those grounds in respect of which the Refugee Determination Record was issued. This is consistent with the object of the Refugee Determination Record as being a common document recognising an entitlement to protection regardless of the basis upon which the entitlement to protection arises.

(c) The Appellant's primary argument

17. The primary argument advanced by the Appellant is that, if a Refugee Determination Record is issued to a person with a pending review application before the Tribunal, that review application will be taken to be determined only if the basis for issuing the Refugee Determination Record (*i.e.* refugee status, derivative status or complementary protection) is the same as the basis for the particular application under s 5 of the RC Act which is the subject of the review before the Tribunal.[13] In this case, the Refugee Determination Record was issued on the basis that the Appellant had been given derivative status. On the Appellant's argument, the issue of the Refugee Determination Record on that basis did not affect the Appellant's review concerning her claim to refugee status and complementary protection. In other words, the Appellant argues that the Refugee Determination Record "only operates with respect to the particular s 5 application in respect of which it is made".

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[13] Appellant's submissions at [19]-[20].

18. Subject to s 8 of the RC Act, a person may now make separate applications for refugee status and derivative status.[14] However, that fact is irrelevant to determining the consequences of the issue of a Refugee Determination Record. Contrary to the Appellant's submissions,[15] the RC Act does not contemplate multiple Refugee Determination Records being issued in respect of the same person. In this regard, the use of the word "or" (usually a disjunctive) in s 6(2A) must be understood in its context. For instance, a determination that a person is a refugee is mutually exclusive with a determination that a person is owed complementary protection for the purposes of the RC Act, because the statutory definition of "complementary protection" applies only to persons who are not refugees.[16] Thus, subparagraphs (a) and (c) in s 6(2A) cannot be read as cumulative alternatives. Nor should subparagraph 6(2A)(b). Rather, s 6(2A) should be construed as meaning that a Refugee Determination Record must be issued to a person who satisfies any one or more of sub-paragraphs 6(2A)(a), (b) or (c).

19. The Appellant's construction of s 6(2A) is inconsistent with the purpose of the provision as reflected in the Explanatory Memorandum. The intention of the Refugee Determination Record is to create a "common document" regardless of the ground upon which a person has been recognised to be the subject of international protection obligations.

20. Further, the text and purpose of s 6(2B) are plainly inconsistent with the proposition that a Refugee Determination Record only operates to determine the particular application under s 5 in respect of which it is made. On the contrary, s 6(2B) expressly provides that a Refugee Determination Record operates to determine <u>any</u> undetermined application made by the person whether for refugee status, for derivative status or as an included dependent. The Appellant's construction would create a tension if not a conflict between the operation of s 6(2B) and s 31(5) of the RC Act. Such tension or conflict is inconsistent with the principle that the RC Act is to be construed on the basis

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14 Sections 5(1) and 5(1AA) of the RC Act; *cf* Appellant's submissions at [26(a)].

15 Appellant's submissions at [26(b)].

16 See definition of "refugee" and "complementary protection" in s 3 of the RC Act.

that all of its provisions "are intended to give effect to harmonious goals".[17] The *prima facie* presumption in favour of a harmonious construction operates with even more force in this case in circumstances where s 6(2B) and s 31(5) were introduced at the same time by the same amending act.

21. Irrespective of whether multiple Refugee Determination Records may be issued in respect of the same person, the real question concerns the consequences for an extant application for review which has been made by a person when a Refugee Determination Record has been issued in respect of that person. The Appellant submits that uncertainty would result if s 31(5) had the effect that "any" or "every" review was deemed to be "validly determined" upon the giving of a Refugee Determination Record, because the outcome of the review would not be known.[18] However, there is no relevant uncertainty in this regard. The review is taken to be "determined" – that is, concluded or completed – because further consideration of whether the review applicant is a person to whom Nauru owes protection obligations becomes unnecessary.

22. In other words, the application for review is overtaken by the grant of a Refugee Determination Record. This renders the review otiose. The issue of the "common document" gives a person who is recognised as having derivative status the same rights and protections under Nauruan law as a person determined to be recognised as a refugee. It is for this reason the Explanatory Memorandum states that the issue of the Refugee Determination Record "is taken to conclude the determination of all protection claims" by the person to whom it is given.

23. The Appellant's preferred construction would deprive s 31(5) of meaningful operation. The Appellant claims that s 31(5) would only operate where the basis on which a Refugee Determination Record is issued is the same basis as that which is in issue in the review. However, the Tribunal's review jurisdiction will, relevantly, only ever be invoked where the Secretary

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[17] *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381-382 [70].

[18] Appellant's submission at [30].

determined the application adversely from the perspective of an applicant.[19] In such circumstances, and assuming no fresh application is permitted under s 8 of the RC Act, there would be no occasion to issue a Refugee Determination Record on the basis considered by the Secretary unless and until the Tribunal on review makes a determination favourable to the review applicant. Even in that case, however, the Refugee Determination Record would only issue upon the completion of the review. Thus, s 31(5) would have no additional field of operation. The preferable construction is one which gives s 31(5) some work to do. That is achieved by construing s 31(5) as determining the review regardless of the basis upon which Refugee Determination Record is issued.

(d) Appellant's secondary arguments

24. In the alternative to her primary contention considered above, the Appellant contends that s 31(5) has no operation in this case because:

    a. upon remittal, the Tribunal would not be exercising jurisdiction conferred by s 31 of the RC Act, but would instead gain jurisdiction by virtue of the order for remittal made by the Supreme Court under s 44(1)(b);[20] or

    b. s 31(5) would not operate to determine the review function in this case because the Tribunal's review had, as a matter of fact, already been determined on the date on which the Appellant was given a Refugee Determination Record.[21]

25. The Appellant cites no authority for the proposition that an order for remittal made in proceedings in the nature of judicial review operates as a separate source of jurisdiction.[22] It may be accepted that an order for remittal is the trigger upon which the Tribunal is required to reconsider the matter. However, that does not mean that the jurisdiction that is exercised by the Tribunal is derived from a different source than was the case in respect of its original determination. To the contrary, an order for remittal would be an

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[19] Section 31(1) of the RC Act.

[20] Appellant's submissions at [21(a)].

[21] Appellant's submissions at [21(b)].

[22] In this regard, it may be noted that the language of s 44 of the RC Act bears some resemblance to that in s 16 of the *Administrative Decisions (Judicial Review) Act* 1977 (Cth).

order in the nature of mandamus, requiring the Tribunal to perform the duty conferred on it by Parliament. The proposition that the Tribunal could 'gain jurisdiction' by an exercise of judicial power must be rejected.

26. The Appellant's argument is also inconsistent with the language of s 44(1)(b) of the RC Act. In particular the word "*re*consideration" suggests the Tribunal's task upon remitter is referable to that which it had previously purported to undertake, namely, consideration of the application made pursuant to s 31(1) of the RC Act. Nor is there anything else in the structure of Part 4 of the RC Act which suggests that the Tribunal's jurisdiction is different upon remittal than it was on the first occasion that the decision of the Secretary was the subject of review (except in so far as the Tribunal is required to comply with any directions of the Court made under s 44(1)(b)). In other words, the purpose of remittal is to require the Tribunal to complete its statutory task, and not to perform a new function derived from the remittal order. Section 42 of the RC Act does not support the Appellant's construction.[23] Section 42 preserves any other rights of review under different legislation or at general law, and does not suggests that a review upon remittal has a separate jurisdictional basis than a review conducted under Part 4 of the RC Act.

27. As to the temporal issue, the Tribunal purported to affirm the decision of the Secretary on 17 March 2015. The Appellant was given a Refugee Determination Record on 5 August 2016. The Appellant submits that s 31(5) does not apply because her application under s 31(1)(a) had been determined at the time she was given a Refugee Determination Record. There are three reasons why the Appellant's contentions should not be accepted.

    a. *First,* even if the Tribunal's review had as a matter of fact been determined at the time when the Refugee Determination Record was given to the appellant, s 31(5) would still have room for operation. The effect of the remittal to the Tribunal would be that the earlier decision would no longer be operative, so that the Tribunal would not be *functus*

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[23] Appellant's submissions at [41].

officio and the application for review would remain to be determined. This would be the case regardless of whether the remittal was accompanied by an order quashing the Tribunal's decision, under s 44(2)(b) of the RC Act, or not (that is, remittal *simpliciter*). In order to give s 31(5) a sensible operation which fulfils its clear purpose, the words "at the time the person is given a Refugee Determination Record" should be construed as having an ongoing (or "always speaking") operation, so that the Refugee Determination Record operates immediately upon remittal to deem the review application to have been "validly determined".

b. *Secondly*, the clear purpose of the introduction of s 31(5) was to determine the review in circumstances where it becomes unnecessary because the review applicant for review has been recognised as a person entitled to protection. The retrospective operation of s 31(5) confirms Parliament's intention to regularise the position that had already been adopted as a matter of policy. The Appellant's proposed construction depends upon a coincidence of timing and does not further the objective of the provision. It would create a lacuna for cases in which there is a pending appeal to the Supreme Court at the time that the person is given the Refugee Determination Record.

c. *Thirdly*, on a proper construction of s 31(5), the application for review will only have been determined where it has been determined according to law.[24] Accordingly, if the Tribunal did make an error of law, the decision made on 17 March 2015 will not be taken to have determined the review. Rather, the review will be taken to have remained undetermined until the time when the Refugee Determination Record was given to the Appellant on 5 August 2016.

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[24] *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (decided prior to the date upon which English law is taken to be received as the law of Nauru – see s 4(1) of the *Custom and Adopted Laws* Act 1971 (Nr)); *cf. Plaintiff S157 v Commonwealth* (2003) 211 CLR 476 at 490-491 [26] and 495 [41]-[42] (Gleeson CJ), at 506 [76] (Gaudron, McHugh, Gummow, Kirby and Hayne JJ) applying a similar construction, albeit whilst maintaining the distinction between jurisdictional and non-jurisdictional errors.

(e) Discretion to grant relief

28. The use of the term "may" in the chapeau of s 41(1) confirms the discretionary nature of relief in "appeals" under Part 5 of the RC Act.[25] This is consistent with, and at least as wide as, the recognised judicial discretion to refuse prerogative relief[26] and the discretion as to the grant of relief under statutory forms of judicial review.[27]

29. The Appellant's submissions[28] raise certain matters in support of an argument that relief would not be futile. All of the arguments depend on there being some potential practical benefit to the Appellant if the Tribunal upon remittal were to determine that she was a refugee or was owed complementary protection. These arguments therefore presuppose that the Tribunal would have jurisdiction to make such a determination. However, if the arguments set out above are correct, s 31(5) would operate to determine the review immediately upon any remittal, and the Tribunal would have no jurisdiction to consider or determine the Appellant's protection claims. The issue therefore whether the Court below was correct to decline to make any orders pursuant to s 44 of the RC Act therefore stands or falls on the parties' competing arguments as to the proper construction of s 31(5) of the RC Act.

Part VII: Argument on the proposed notice of contention

30. By summons dated 20 December 2017 the Respondent seeks an order under Rule 4.02 of the *High Court Rules 2004* (Cth) enlarging the period of time fixed by rule 42.08 for the filing of a notice of contention. The explanation for the delay in filing the notice of contention is set out in the affidavit of Rogan O'Shannessy affirmed on 28 November 2017. The appellant has consented to the necessary leave.[29] The Respondent is not

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25 Interpretation Act, s 57(1).

26 See, by way of example, s 16 of the *Administrative Decisions (Judicial Review) Act* 1977 (Cth).

27 *Mallach v Aberdeen Corporation* [1971] 1 WLR 1578 at 1595 (Lord Wilberforce); *Re Refugee Review Tribunal; ex parte Aala* (2000) 204 CLR 82 at 89 [5] (Gleeson CJ), at 106 [51]-[55] (Gaudron and Gummow JJ) at 106 [146] (Kirby J), at 144 [172] (Hayne J), at 157 [217] (Callinan J).

28 Appellant's submissions at [46].

29 See proposed consent orders filed on 20 December 2017.

aware of any prejudice to the Appellant by reason of the delay, and submits that it is in the interests of justice that such an order be made.

31. The submissions below address the substance of the issue raised by the notice of contention.

32. The Supreme Court noted that the Appellant's substantive claims for refugee status depended, at least in part, on the state of her mental health.[30] The Court went on to find that in the absence of "a proper medical report" the Tribunal could not determine these claims,[31] and that the Tribunal -

> ...should have adjourned the hearing and asked the appellant to obtain a full medical report, so it could adequately deal with the review process. The Tribunal failed to do so and therefore it fell into an error of law.

33. The Supreme Court's reasoning does not articulate the basis on which the failure to adjourn the hearing, or to ask the Appellant to obtain a full medical report, constituted an error of law.

34. The Tribunal is constituted by the RC Act and must operate in accordance with its governing statute and, except to the extent modified by statute, the common law of Nauru.[32] Keeping in mind the different statutory context, it is nevertheless useful to have regard to Australian authorities considering merits review tribunals.

35. As the Supreme Court correctly noted, the Tribunal's process is inquisitorial.[33] Although the Tribunal has certain powers to obtain information,[34] it was for the Appellant "to put forward the evidence [she wished] the Tribunal to consider".[35] It was not for the Tribunal to direct or advise the Appellant how to make good her claims. Evidence as to the state

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30 J1 [64].

31 J1 [65].

32 Section 4(1) of the *Custom and Adopted Laws Act* 1971 (Nr) provides, relevantly, that the common law and statutes of general application which were in force in England on 31 January 1968 are adopted as laws of Nauru.

33 J1 [62].

34 e.g. ss 24(1)(d), 24(2) and s 36 of the RC Act.

35 *Minister for Immigration and Citizenship v SZGUR* (2011) 241 CLR 594 at 621 [84] (Gummow J, with whom Heydon J and Crennan J separately agreed); *Minister for Immigration and Multicultural Affairs v QAAH of 2004* (2006) 231 CLR 1 at 17 [40] (Gummow ACJ, Callinan, Heydon and Crennan JJ).

of the Appellant's mental health, and the connection between her mental health and her substantive claims, could be expected to be provided by the Appellant or her representatives.[36] While this was correctly acknowledged by the Supreme Court,[37] the Court erred in finding that that Tribunal was required to fill in the gaps in the Appellant's case.

36. In so far as the Supreme Court found the legal error to be a failure to adjourn, it is sufficient to note that the Appellant was legally represented during the Tribunal's review and her legal representatives attended the hearing.[38] There is no evidence that either the Appellant or her representatives requested the Tribunal to adjourn the review or averted to the importance, in terms of the assessment of her substantive claims, of obtaining a medical report into her mental health. The Tribunal was entitled to presume, in the absence of any contrary indication, that the appellant wished for the Tribunal to determine her application for review. There is no basis to impugn the approach taken by the Tribunal in proceeding to determine the review.

37. Two other matters should be noted for completeness.

38. *First,* the Tribunal accepted that the Appellant had "mental health issues" and took those issues into account when assessing her claims.[39] No error is disclosed in this approach. The Tribunal was required by s 40(1) of the RC Act to invite the Appellant to appear before the Tribunal to give evidence and present arguments. The Tribunal complied with that obligation, and the observation that the Appellant appeared "very depressed" at the hearing[40] does not establish that the appellant was denied a fair hearing. There is nothing to suggest that the Appellant's condition was such that she was unable "to give an account of [her] experiences, to present argument in support of [her] claims, to understand

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36 *Minister for Immigration and Citizenship v SZGUR* (2011) 241 CLR 594 at 621 [84] (Gummow J, with whom Heydon J and Crennan J separately agreed).

37 J1 [61].

38 J1 [28]-[29].

39 T [11].

40 Decision of the Refugee Status Review Tribunal, File number 14054, 17 March 2015 (**T**), at [9].

and to respond to questions put to [her]".[41] Nor did the appellant put any evidence before the Supreme Court to attempt to discharge her onus of establishing that she was unfit to take part in the Tribunal hearing.[42]

39. The Tribunal was also required to exercise its statutory powers consistently with the requirements of natural justice.[43] The requirements of procedural fairness are not fixed, and depend on all of the circumstances of each particular case.[44] However, procedural fairness did not require the Tribunal to undertake an assessment of the Appellant's psychological condition.[45] Nor, it is submitted, did it require the Tribunal to advise the Appellant to obtain further medical evidence in relation to her condition.

40. *Secondly,* the argument before the Supreme Court relevantly focused upon the issue of whether the Tribunal had failed to consider the Appellant's mental health condition in reaching its determination.[46] This is not the error that was ultimately identified by the Court. In any event, for the reasons advanced by the Respondent in the Court below, the Tribunal did not err in the manner alleged.[47]

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41 *Minister for Immigration and Citizenship v SZNVW* (2010) 183 FCR 575 at 582 [20] (Keane CJ, with whom Emmett J agreed).

42 *NAMJ v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 76 ALD 56 at 71 [69] (Branson J).

43 Section 22(b) of the RC Act; *HFM045 v Republic of Nauru* [2017] HCA 50 at [38].

44 *Wiseman v Borneman* [1971] AC 297 at 308B (Lord Reid), 309A (Lord Morris of Borth-y-Gest 320H (Lord Wilberforce); *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123 at [40].

45 *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* (2004) 78 ALJR 992 at 995 [19] (Gleeson CJ).

46 Notice of Appeal to the Court below, ground 2.

47 See J1 [58]-[59]; Respondent's submissions to the Court below dated 10 March 2017 at [33]-[46].

Part VIII: Oral argument

41. The Respondent estimates it will require 1 ½ hours for the presentation of oral argument.

Dated: 20 December 2017

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